

In the United States Circuit
Court of Appeals

FOR THE NINTH CIRCUIT

THE CITY OF ASTORIA, a municipal corporation of the State of Oregon,

Plaintiff in Error.

vs.

AMERICAN LA FRANCE FIRE ENGINE COMPANY, a corporation,

Defendant in Error.

TRANSCRIPT OF RECORD

Upon Writ of Error to the District Court of the
United States for the District of Oregon

Filed

MAR 4 - 1915

F. D. Monckton,
Clerk.

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In the District Court of the United States

FOR THE
DISTRICT OF OREGON

SUIT AT LAW NO. 6406

AMERICAN LA FRANCE FIRE
ENGINE COMPANY, a corpor-
ation,

Plaintiff.

vs.

THE CITY OF ASTORIA, a muni-
cipal corporation of the State of
Oregon,

Defendant.

CITATION

To the American-LaFrance Fire Engine Com-
pany, a corporation, greeting:

You are hereby cited and admonished to be
and appear before the United States Circuit Court
of Appeals, for the 9th Circuit, at San Francisco,
California, within thirty (30) days from the date
hereof, pursuant to a writ of error filed in the
Clerk's office of the District Court of the United
States for the District of Oregon, wherein the City
of Astoria, a municipal corporation of the State
of Oregon, said defendant, is plaintiff in error and
you are defendant in error, to show cause, if any

there be, why the judgment in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland, Multnomah County, Oregon, in said District, this 3rd day of February, 1915.

Chas. E. Wolverton, Judge.

Due service of the within citation on writ of error is hereby admitted, this 3rd day of February, 1915, by receiving a duly certified copy of said citation on writ of error, certified to be a copy thereof by A. W. Norblad, attorney for said defendant.

Fulton & Bowerman,
Attorneys for Plaintiff.

Filed February 3, 1915,
G. H. Marsh, Clerk.

In the District Court of the United States for the District of Oregon, March Term, 1914.

Be it Remembered, That on the 16th day of

May, 1914, there was duly filed in the District Court of the United States for the District of Oregon, a Complaint, in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF OREGON

AMERICAN-LaFRANCE FIRE ENGINE COM-
PANY, Inc., a corporation,

Plaintiff,

vs.

THE CITY OF ASTORIA, a municipal corpora-
tion of the State of Oregon,

Defendant.

The above named plaintiff, complaining of the above named defendant, for its cause of action alleges:

I.

That the plaintiff is, and during all the time hereinafter mentioned was, a corporation duly created, incorporated, organized and existing under and pursuant to the laws of the State of New York, and as such corporation engaged in the business of manufacturing and selling fire engines and apparatus employed in extinguishing fires. That plaintiff has complied with all of the laws of the State of Oregon regulating foreign corporations and prescribing what they shall do in order to be permitted to carry on, conduct and transact business in the State of Oregon, including the payment of all taxes required of such corporations and including the payment of the annual tax on such corporation for the years 1913 and 1914.

II.

That the defendant, City of Astoria, is a municipal corporation of the State of Oregon, duly incorporated, organized and existing under and pursuant to an act of the Legislative Assembly of the State of Oregon entitled "An Act to incorporate the City of Astoria, in Clatsop County, Oregon," approved October 20th, 1876, and acts amendatory thereof.

III.

That the powers and authority of the defendant, vested in it by its charter, are vested in and exercised by a mayor and a common council of said City of Astoria, and during all the time hereinafter mentioned the Common Council of said City of Astoria consisted of nine Councilmen.

IV.

That among other committees duly created and constituted by said Common Council and existing during all the time herein mentioned was the Committee on Fire and Water of said Common Council, composed of three members thereof, which three members of said committee were Charles Wilson, John Nordstrom and Karl Knobloch.

V.

That on the — day of June, 1897, said Common Council of the said defendant duly enacted an

ordinance entitled "An ordinance to establish a paid fire department, etc.," and which ordinance was, after its passage, duly approved by the Mayor of said defendant on the 15th day of June, 1897. That said ordinance created and organized a paid fire department of the said City of Astoria, and Section 1 of said ordinance is in words and figures as follows:

"Section 1. That there be and hereby is, organized a paid fire department of the City of Astoria, with powers and duties to be exercised by and through the Committee on Fire and Water of the Common Council of said City."

That Section 3 of said ordinance is in words and figures as follows, to-wit:

"Section 3. The Committee on Fire and Water, and their successors in office, shall constitute and be ex-officio fire commissioners of the fire department of the City of Astoria."

That among other duties imposed on said committee as such commissioners by such ordinance was the duty of appointing from time to time a chief engineer of said fire department, and prescribing his duties, and it was also made the duty of said committee to organize the engine companies, hose companies, hook and ladder companies, and chemical engine companies, so as to meet the requirements of the said City of Astoria. That Sec-

tion 11 of said ordinance is in words and figures as follows, to-wit:

Section 11. The Committee on Fire and Water, the ex-officio fire commissioners, shall purchase all supplies for the fire department and order all necessary repairs, subject to the ordinances of the City of Astoria."

Section 15 of said ordinance is in words and figures as follows, to-wit:

"Section 15. The Committee on Fire and Water, the ex-officio fire commissioners, shall report to the Common Council at least once in each month the expenditures of the department, with other matters pertaining thereto of public interest, and shall in the month of January of each year, report in detail to the Common Council the annual receipts and expenditures of the department, including a complete inventory of all the property in their charge."

VI.

That on the 21st day of July, 1913, the said Committee on Fire and Water presented to the Mayor and Common Council of said defendant city a communication in words and figures as follows:

"Astoria, Oregon, July 21st, 1913.

"To the Mayor and Council.

"Gentlemen:

"In connection with the recommendation of the Chief of the Fire Department we would recommend that we be authorized to get prices

on another auto fire apparatus and submit them with our recommendations to the next meeting of the Council.

“Charles Wilson,
“Karl Knobloch,
“John Nordstrom,
“Committee on Fire and Water.”

That the said Common Council of the said defendant city met in regular session on said 21st day of July, 1913, and the said communication from the said Committee on Fire and Water was received by said Common Council, and after the same had been read a motion was duly made and seconded and carried by the unanimous vote of said Council that said Committee be authorized to secure prices and report the same to the Council as in its said communication recommended. That thereafter on the 4th day of August, 1913, the said Common Council duly met in regular session, and at such meeting the said Committee on Fire and Water duly submitted to the said Common Council a report in words and figures as follows, to-wit:

“Astoria, Oregon, August 4th, 1913.

“To the Mayor and Council.

“Gentlemen:

“In accordance with action of last meeting we herewith submit the cost of a piece of auto apparatus.

“A combination wagon, single tank, will cost \$5500; with double tanks \$5800. A triple combination pump-hose and chemical, the size we think proper, will cost \$9500 f. o. b. Astoria. We would therefore recommend that we, by the adoption of this report, be authorized to enter into contract with A. G. Long, Agent of the American-LaFrance Fire Engine Company for one type 12, six cylinder Combination Pump Hose and Chemical Car for the sum of \$9500.00.

“In connection with this report, we would say that it was the intention of the Council last year that another piece of auto apparatus should be bought this year, and the Committee on Ways and Means provided for the same in the levy and the taxes were collected on that basis. We believe it will be a wise investment to purchase this piece of apparatus, as along with the hose and chemical we will have a powerful pump, should the occasion demand it at any time it might pay for itself in a short time.

“If we do not purchase at this time it will mean that we will have to levy a large tax again next year, or else not add any to the department's efficiency with apparatus. If we buy now we can cut down the levy for next year a very considerable amount. While it is true that we have expended a large amount for the department in the last few years in buying apparatus, we believe the reduction in

insurance will more than offset the same in a short time.

“Charles Wilson,
 “John Nordstrom,
 “Karl Knobloch,
 “Committee on Fire and Water.”

That said report was duly received by said Common Council and read in open session, and thereupon a motion was made by a member of said Common Council that the said report and recommendations therein contained be adopted, and said motion having been stated by the Mayor to the said Common Council, was adopted by the unanimous vote of the said Common Council and the members thereof.

VII.

That pursuant to said authorization by the Common Council of the said defendant city on the 4th day of August, 1913, the said Committee on Fire and Water on the 6th day of August, 1913, entered into a contract in writing, which, omitting the specifications and guarantees attached thereto, was and is in words and figures as follows, to-wit:

“THIS AGREEMENT, Made by and between the AMERICAN-LaFRANCE FIRE ENGINE COMPANY, Inc., party of the first part, hereinafter called the Company, and THE CITY OF ASTORIA, OREGON, party of the second part, hereinafter called the Buyer.

“WITNESSETH: That the Company agrees to sell upon the conditions which are below written the apparatus and equipment hereinbefore described, all of which are to be in accordance with the specifications and guarantees attached, and which are made a part of this agreement and contract.

“Delivery is to be made on cars at Astoria, Oregon, and shipment to be made within about 60 working days after receipt and approval of this contract, duly executed, or as soon thereafter as is consistent with good workmanship and proper painting, subject to delays resulting from any causes beyond the control of the Company.

“The Buyer agrees to purchase and pay for the aforesaid property, delivered as aforesaid, the sum of Nine Thousand Five Hundred Dollars (\$9,500.00) to be paid to the American-LaFrance Fire Engine Company or its authorized agent as stated below, with interest at the rate of six per cent per annum upon any sum not so paid from the time such payment becomes due until same is paid. No payments to be made to agents except on presentation in writing of an express power of attorney to accept payment.

“Terms of payment to be:

“Nine Thousand Five Hundred Dollars in cash within 15 days after delivery and acceptance of the apparatus and equipment.

“Witness our hands and official seals this
6th day of August, 1913.

“American-LaFrance Fire Engine
Company, Inc.,

“Party of the first part,

“By A. G. Long, Genl. Agt.

“The City of Astoria,

“By Charles Wilson, Ch.,

“K. Knobloch,

“John Nordstrom,

“Fire and Water Committee.”

That said contract was duly filed on the day it was executed with the Auditor and Police Judge of the said defendant city, said Auditor and Police Judge being also and ex-officio the clerk of the said Common Council. That the said specifications attached to the said contract provided for the construction by plaintiff for the said defendant city of one American-LaFrance triple combination pumper, hose and chemical motor car, type 12, to be built in accordance with the specifications attached to said contract.

VIII.

That a copy of said contract was on the execution thereof duly forwarded by mail to this plaintiff, which immediately accepted the same and entered upon the work of constructing and providing the said apparatus, and the same was duly con-

structed by this plaintiff pursuant to the terms of the said contract in all respects and was shipped from the factory of the plaintiff in the State of New York to the said defendant city, where it arrived on the — day of January, 1914. And thereafter on the 31st day of January, 1914, the said Committee on Fire and Water duly made and submitted to the said Common Council a report in words and figures as follows, to-wit:

“Astoria, Oregon, January 31st, 1914.

“To the Mayor and Council.

“Gentlemen:

“We, the Committee on Fire and Water, beg to report that the triple combination pump, chemical and hose car, that we contracted for with the American-LaFrance Fire Engine Company, through their agent, Mr. A. G. Long, is acceptable in every point as was fully demonstrated in the various tests that it was put in this city on Friday, January 23rd, and this test showed to us and all present on that date, that with this apparatus the east and west ends of the city will have some fire protection, a thing that they have not under present and past conditions, and we therefore recommend the passage of the ordinance providing for the payment of the bill for the same.

“Respectfully submitted,

“Charles Wilson,

“John Nordstrom,

“Karl Knobloch,

“Committee on Fire and Water.”

That said report of January 31st, 1914, duly came before and was received by the Common Council of said defendant city at a regular session thereof duly held on the 2nd day of February, 1914, and said report having been read to the said Common Council by the Clerk thereof, thereupon a motion was made by a member of the said Common Council that the said report be adopted, and the roll being called on said vote, six members of said Common Council voted for and in favor of said motion and three members of the said Common Council voted against said motion, and thereupon the motion was declared duly carried by the presiding officer of the said Common Council. That pursuant to said action of said Common Council in adopting the report last aforesaid, an ordinance was duly introduced in said Council and was on the 2nd day of February, 1914, duly passed by said Council, which ordinance required the Auditor and Police Judge of the said defendant city to draw a warrant in the sum of \$9500.00, payable to this plaintiff in payment of the purchase price of said apparatus. That said ordinance last mentioned was duly submitted to the Mayor of said defendant city for his approval and said Mayor thereafter returned said ordinance to the said Common Council without his approval, and the said ordinance was by said Mayor vetoed.

IX.

That on the arrival of said fire apparatus at the said City of Astoria aforesaid the same was duly tendered by this plaintiff to the said defendant city and was delivered to said city at its fire headquarters in the said city. That the said city now refuses to accept or pay for said apparatus or any thereof on the ground that the purchase thereof was not authorized by any ordinance of said city. That this plaintiff has duly performed all the terms, provisions and stipulations of said contract on its part to be performed and has duly presented to the Common Council aforesaid a statement of its demand for the purchase price of the said apparatus in the sum of \$9500.00 and has demanded payment thereof of said Common Council and of said city, but to pay the same or to make any provision for the payment thereof the said City of Astoria and said Common Council refused and still refuse.

Wherefore, The plaintiff demands judgment against the defendant for the sum of \$9500.00, together with interest thereon at the rate of six per cent per annum from the 19th day of January, 1914, together with its costs and disbursements of this action.

Fulton & Bowerman,
Attorneys for Plaintiff.

STATE OF OREGON,)
) ss.
 County of Multnomah.)

I, A. G. Long, being first duly sworn, depose and say, that I am the agent of the plaintiff in the above entitled action and that the above and foregoing complaint is true as I verily believe.

A. G. Long.

Subscribed and sworn to before me this 12th day of May, 1914.

(Notarial Seal)

C. W. Fulton,

Notary Public for the State of Oregon.

Filed May 16, 1914.

A. M. Cannon, Clerk.

And afterwards, to-wit, on the 17th day of June, 1914, there was duly filed in said Court, and cause, a Demurrer to Complaint, in words and figures as follows, to-wit:

DEMURRER.

Now comes said defendant and demurs to the complaint filed and served by the plaintiff herein, and for cause of demurrer alleges that said complaint does not set forth a cause of action.

A. W. Norblad,

Attorney for Defendant.

STATE OF OREGON,)
) ss.
 County of Clatsop,)

I, A. W. Norblad, do hereby certify that I am the attorney for said defendant; that the within and foregoing demurrer is in my opinion well found in law.

Dated this 16th day of June, 1914.

A. W. Norblad,
 Attorney for Defendant.

Filed June 17, 1914.

A. M. Cannon, Clerk.

And afterwards, to-wit, on Monday, the 7th day of December, 1914, the same being the 31st judicial day of the regular November term of said Court; present, the Honorable Charles E. Wolverton, United States Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER OVERRULING DEMURRER.

This cause was heard by the Court upon the demurrer to the complaint herein and was argued by Mr. Alex Bernstein, of counsel for the plaintiff, and by Mr. A. W. Norblad and Mr. Curtiss, of counsel for said defendant; on consideration whereof, it is ordered and adjudged that said motion be, and the same is hereby overruled.

And afterwards, to-wit, on the 7th day of December, 1914, there was duly filed in said Court, and cause, an Opinion, in words and figures as follows, to-wit:

OPINION.

Fulton & Bowerman, Portland, Oregon, for Plaintiff.

A. W. Norblad, Astoria, Oregon, and A. R. Wollenberg, Portland, Oregon, for Defendant.

Wolverton, District Judge:

This is an action to recover against the City of Astoria, on a contract entered into by and between plaintiff and the Fire and Water Committee for the city, the cost price of a six-cylinder combination pump hose and chemical car, to be used as a fire apparatus in extinguishing conflagrations in the city. The liability of the city upon the contract is challenged by demurrer to the complaint. The question presented is whether the Fire and Water Committee had the requisite power and authority to enter into the contract on the part of the city and in its behalf.

There is a miscellaneous provision in the city charter declaring that the city "is not bound by any contract, or in any way liable thereon, unless the same is authorized by city ordinance, and made in writing, and by order of the Council, signed by

the Auditor and Police Judge, or some other person duly authorized on behalf of the city." Sec. 124, Charter.

The City Council is accorded power and authority, under the charter to do numerous things (Sec. 38), among which is "to establish and maintain a fire department," to appoint fire commissioners, to make and ordain rules for the government of the department, and to provide engines and other apparatus therefor (Par. 42, Sec. 38), and to appropriate money to pay the debts, liabilities, and expenditures of the city, or any part or item thereof, from any fund applicable thereto, "Provided, that no bills shall be contracted by any person or officer of the city without first sending to the Common Council a written requisition therefor, stating the items needed with the cost thereof, and, if the council deem the supplies necessary, they shall authorize the proper committee to purchase the same." (Par. 33, Sec. 38.)

It is further provided that the power and authority given to the council by Sec. 38 "can only be exercised or enforced by ordinance, unless otherwise provided."

In pursuance of its power and authority, the City Council by ordinance created a fire department, declaring that the powers and duties thereof should be exercised by and through the Committee on Fire and Water, the committee being

composed of members of the Common Council, and it was provided, among other things, that the commissioners "shall purchase all supplies for the fire department, and order all necessary repairs, subject to the ordinances of the city."

Now, acting perhaps as the committee and the Common Council deemed they had a legal right and were empowered to do, the committee, on July 21, 1913, addressed to the Mayor and Common Council a recommendation that said committee be authorized to obtain prices for another fire apparatus, and, acting upon the recommendation, the Common Council adopted a motion authorizing the committee to act. On August 4th the committee, by a report to the Common Council recommended that it (the committee) be authorized to enter into a contract with A. G. Long, agent of the American-LaFrance Fire Engine Company, for supplying the apparatus in question. The contract was subsequently made on the part of the committee in pursuance of this authority.

It is objected to the validity of the contract that its execution on the part of the city was not authorized in conformity with the requirements of Sec. 124 of the charter.

In an analogous case in the Supreme Court of the State of Oregon, wherein it was sought to have applied the identical provision in bar of a recovery

on contract with the city, the Court held that, as the charter had conferred special power upon the Common Council touching the subject matter of the contract, the more general provision was without application. *Beers vs. Dalles City*, 16 Or. 334. There it was said:

“The Council, having full power over the subject, may exercise it in any manner that may be most convenient.”

And it was further said, the Court speaking through Mr. Justice Strahan:

“I think that section was designed to apply to those cases, and only to those where an ordinance is required by the charter, and where the work is expressly required to be let to the lowest responsible bidder, after notice, as in Sec. 86 of the charter.”

The principle was applied in a recent case in the Circuit Court of Appeals for this circuit (*City of Forsyth vs. Crellin*, 210 Fed. 835), wherein it is said:

“Thus is provided a specific method by which the city may not only secure the work to be done, but may obligate itself to compensate the contractors for doing the work.”

In the present case the fire department was created by ordinance, and the Common Council was proceeding in pursuance of its special authority to create a fire department and to provide engines

and other apparatus therefor, wherein it authorized the execution by the committee of the contract in question, and I am impressed, in the light of the case of Beers vs. Dalles City, supra, that the contract is legal and binding upon the city, and so hold.

From the complaint it appears that, in reliance upon the contract, the plaintiff constructed the apparatus in New York and shipped it to Astoria, where it was duly tested by the committee and found to be up to the requirements of the contract, so that in justice and good conscience the city ought to pay the stipulated purchase price. The city did not in the end accept or appropriate the apparatus to its own use, so that there was not an executed contract, and the city is not bound on that principle, as urged by plaintiff.

The demurrer will be overruled, and it is so ordered.

Filed December 7, 1914.

G. H. Marsh, Clerk.

And afterwards, to-wit, on the 23rd day of December, 1914, there was duly filed in said Court, and cause, an Answer, in words and figures as follows, to-wit:

ANSWER.

Now comes said defendant and answering unto the complaint of plaintiff herein, admits, denies and alleges as follows:

I.

Defendant admits each and every allegation set forth in paragraphs I, II, III, IV, V, VI, VII and VIII of said complaint.

II.

Answering unto paragraph IX of said complaint, the defendant denies that said fire apparatus was tendered to this defendant by the said plaintiff; denies that said fire apparatus was delivered to the defendant at the fire headquarters of said city or at any other place; and denies that the same was delivered to said city; and alleges that the City of Astoria never has had any contract with said plaintiff as alleged in said paragraph IX of complaint herein.

Wherefore, defendant demands that the said suit be dismissed and for its costs and disbursements herein.

A. W. Norblad,
City Attorney and Attorney
for Defendant.

true copy of the foregoing motion, certified to by C. W. Fulton, of attorneys for plaintiff.

Alice Hornaday.

Subscribed and sworn to before me this 28th day of December, 1914.

C. W. Fulton,

Notary Public for the State of Oregon.

(Notarial Seal)

Filed December 28, 1914.

G. H. Marsh, Clerk.

And afterwards, to-wit, on Monday, the 11th day of January, 1915, the same being the 61st judicial day of the regular November, 1914, term of said Court; present, the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

JUDGMENT.

Now, at this day, this cause comes on to be heard on the motion of the plaintiff for a judgment on the pleadings on the ground that the answer filed by the defendant tenders no issue of fact, the plaintiff appearing by Mr. C. W. Fulton and Mr. D. Solis Cohen, of counsel, and the defendant appearing by Mr. A. W. Norblad, of counsel, who stated that the denials in the answer were designed and intended only to put in issue the validity of the contract alleged in the complaint; and the

Court having heard counsel for the respective parties and being advised in the premises, allows said motion.

IT IS THEREFORE ORDERED, ADJUDGED AND CONSIDERED by the Court that the plaintiff have and recover of and from the defendant the City of Astoria the sum of \$10,038.33, together with its costs and disbursements in this action, taxed at \$23.15, and that execution issue therefor. Whereupon, on motion of said defendant, it is ordered that it be and is hereby allowed to amend its answer herein by interlineation. And it is further ordered that the bond to be given by said defendant on appeal herein be and the same is hereby fixed at the sum of \$12,500.00.

And afterwards, to-wit, on the 3rd day of February, 1915, there was duly filed in said Court, and cause, a Petition for Writ of Error, in words and figures as follows, to-wit:

PETITION FOR WRIT OF ERROR.

Now comes the City of Astoria, a municipal corporation of the State of Oregon, plaintiff in error, by A. W. Norblad, its attorney, and says: That on the 11th day of January, 1915, a judgment in the sum of \$10,038.33, and for costs and disbursements herein, was by the Court duly entered against the said defendant and in favor of the said plaintiff, as aforesaid, and that in said judg-

ment and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of this defendant, all of which will more fully appear in detail from the assignment of errors, which is filed with this petition.

Wherefore, this defendant prays that a writ of error issue in its behalf to the United States District Court of Appeals for the 9th Circuit, for the correction of errors so complained of and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to said Court of Appeals.

Dated this 3rd day of February, 1915.

A. W. Norblad,
Attorney for Defendant.

Filed February 3, 1915.

G. H. Marsh, Clerk.

And afterwards, to-wit, on the 3rd day of February, 1915, there was duly filed in said Court, and cause, an Assignment of Errors, in words and figures as follows, to-wit:

ASSIGNMENT OF ERRORS.

Now comes the said defendant, the City of Astoria, a municipal corporation, and in connection with its petition for a writ of error in the above entitled action, says that there was error on the part of the District Court of the United States for

the District of Oregon in regard to the matters and things hereinafter set forth, and therefore, the defendant makes this its

ASSIGNMENT OF ERRORS.

I.

That the said District Court erred in allowing the motion made by the plaintiff, for a judgment on the pleadings.

II.

That the said District Court erred in holding that the answer of the defendant, filed in said cause, did not present any issue of fact to be tried.

III.

That the said District Court erred in allowing said motion for judgment on the pleadings and giving a judgment against said defendant.

IV.

That the said District Court erred in not sustaining the defendant's demurrer interposed in said cause.

V.

That the said District Court erred in not dismissing said action.

VI.

That the said District Court erred in rendering judgment in favor of the plaintiff and against the defendant, for the reason that the same is contrary to the law.

Wherefore, the said defendant, plaintiff in error, prays that the judgment of the District Court of the United States for the District of Oregon, in the above entitled cause, be reversed and that the said action may be dismissed.

A. W. Norblad,
Attorney for Defendant.

Filed February 3, 1915.
G. H. Marsh, Clerk.

And afterwards, to-wit, on Wednesday, the 3rd day of February, 1915, the same being the 81st judicial day of the regular November, 1914, term of said Court; present, the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER ALLOWING WRIT OF ERROR.

On the 3rd day of February, 1915, came the above named defendant, by A. W. Norblad, its attorney, and files herein and presents to the Court, its petition, framed for the allowance of a writ of error and intended to be urged by the de-

fendant, praying also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered on the 11th day of January, 1915, duly authenticated, may be sent to the United States Circuit Court of Appeals for the 9th Judicial Circuit, and that such other and further proceedings may be had as may appear in the premises; upon consideration hereof, the Court does allow the writ of error, the supersedeas bond, if such bond be given by said defendant, to be in the sum of \$12,500.00.

Chas. E. Wolverton, Judge.

Filed February 3, 1915.

G. H. Marsh, Clerk.

And afterwards, to-wit, on the 3rd day of February, 1915, there was duly filed in said Court, and cause, a Bond on Writ of Error, in words and figures as follows, to-wit:

BOND.

KNOW ALL MEN BY THESE PRESENTS:

That we, the City of Astoria, a municipal corporation of the State of Oregon, and the National Surety Company, a corporation of New York, duly authorized by law to transact a surety business in the State of Oregon, are held and firmly bound unto the American-LaFrance Fire Engine Company, a corporation, in the full and just sum of

\$12,500.00 to be paid to the said American-LaFrance Fire Engine Company, its attorneys, successors or assigns, to which payment well and truly to be made, we bind ourselves and our successors jointly and severally by these presents.

Signed and dated this, the 3rd day of February, 1915.

Whereas, lately at a regular term of the District Court of the United States for the District of Oregon, setting at Portland in said District, in a suit pending in said Court between the American-LaFrance Fire Engine Company, a corporation, plaintiff, and the City of Astoria, a municipal corporation of the State of Oregon, defendant, cause No. 6406 on the law docket of said Court, final judgment was rendered against the said City of Astoria, a municipal corporation of the State of Oregon, for the sum of \$9500.00 with interest thereon at the rate of six (6) per cent per annum, from the 19th day of January, 1914, together with costs and disbursements in said suit, taxed at the sum of \$40.00, and the said defendant has obtained a writ of error and filed a copy thereof in the clerk's office of said Court, to reverse the said judgment of said Court in the aforesaid suit, and a citation directed to the said American-LaFrance Fire Engine Company, a corporation, defendant in error, citing him to be and appear before the United States Circuit Court of Appeals for the

9th Circuit, to be holden at San Francisco, in the State of California, according to law, within thirty (30) days from the date hereof.

Now the condition of the above obligation is such that if the said City of Astoria shall prosecute its writ of error to effect and answer all damages and costs, if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

In Witness Whereof, the said principal has hereunto set its hand by its duly authorized Auditor and Police Judge and affixed the seal of said municipal corporation, and the said surety has caused these presents to be signed by its Resident Vice President and its Resident Assistant Secretary, and its corporate seal to be attached hereto this 3rd day of February, 1915.

The City of Astoria, a municipal corporation,

By Olof Anderson (Seal)
 Its Auditor and Police Judge.
 (Seal of City of Astoria)

The National Surety Company, a corporation,

By Mark Hubbert (Seal)
 Resident Vice President.
 M. O. Mauer (Seal)
 Resident Asst. Secretary.
 (Seal of National Surety Company)

Witnessed by

A. W. Norblad

E. M. Houghton

Examined and approved this 3rd day of February, 1915.

Chas. E. Wolverton, Judge.

Filed February 3, 1915.

G. H. Marsh, Clerk.

UNITED STATES OF AMERICA,)

) ss.

District of Oregon.)

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record upon Writ of Error in the case in which the American-LaFrance Fire Engine Company is plaintiff, and defendant in error, and the City of Astoria is defendant, and plaintiff in error, in accordance with the law and the rules of Court, and that the said transcript is a full, true and correct transcript of the record and proceedings had in said Court in said cause, as the same appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing transcript is \$———— for Clerk's fees for preparing the transcript of record, and \$———— for printing said record, and that the same has been paid by the said plaintiff in error.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Portland in said District this — day of ———, 1915.

Clerk.